



**California Labor and Workforce
Development Agency**

Department of Industrial Relations

**Commission on Health and Safety
and Workers' Compensation**

Draft Recommendation for Permanent Disability Rating Schedule

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Key Points

- PD reform is part of overall system reform
- How PD is rated and converted to weeks and dollars
- Both statutory and administrative changes have affected PD's share of system costs
- RAND PD study measured proportional losses of earnings
- Using RAND findings with DEU rating data to fine-tune administrative implementation of reform
- Policy question of adequacy, cost, reasonable goal of reform
- Conclusive vs. Prima Facie evidence of percent of disability
- Recommendations

California's Workers' Compensation System

1913 “bargain” between labor and employers

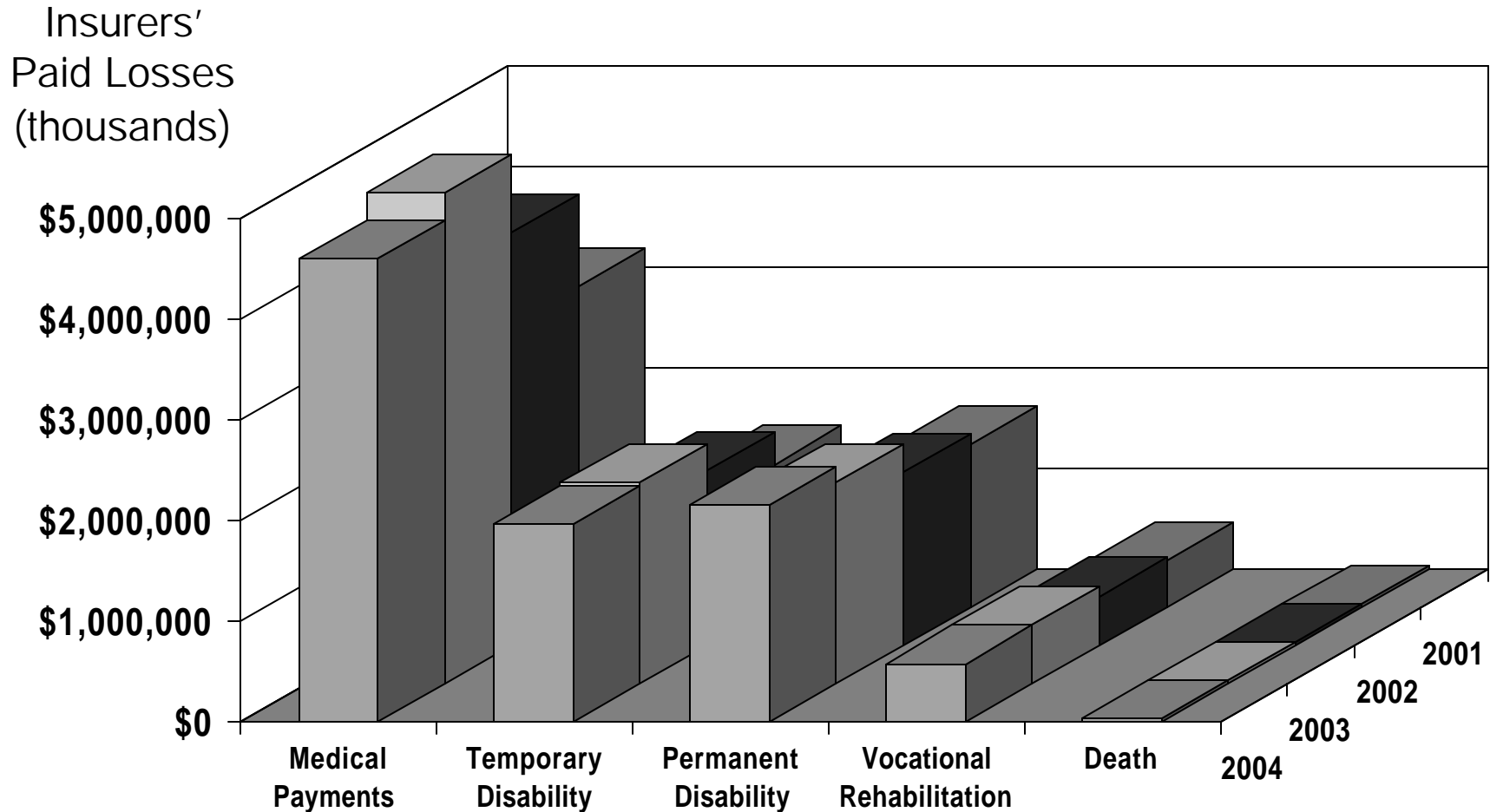
- Employers pay for work injuries, regardless of fault, but employers are not liable for civil damages.
- Employees give up right to sue, and the amount of their benefits is limited, but employees are assured of receiving benefits for most injuries.
- WC system should make “adequate provisions” to relieve workers from the consequences of work injuries.

California Constitution, Art. XIV, Section 4.

Reforms Compelled by Costs

- Cost of WC was hurting the California economy, both employers and labor
- Benefits were not consistently reaching the workers who needed them
- Excessive costs and poor outcomes

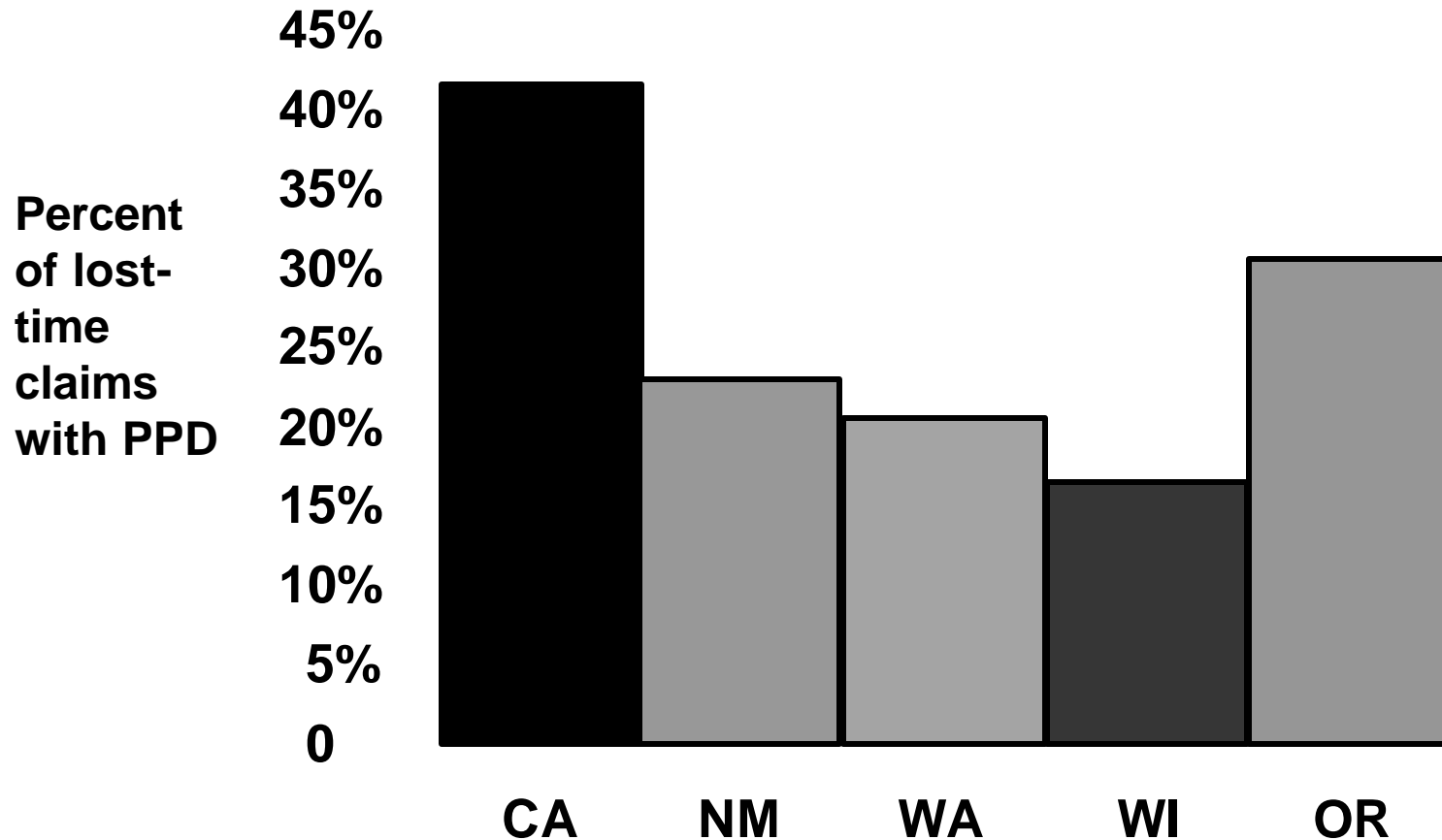
Many Parts to Both the Problem and the Solution



Reasons for PD Reform

- **California Permanent Disability system was costly**
- **California Permanent Disability Rating Schedule was procedurally complicated, expensive to administer, unpredictable and variable.**
- **Objectives of the new PD Rating Schedule are to:**
 - **Reduce inconsistency and unpredictability of the ratings.**
 - **Target the benefits appropriately.**
 - **Reduce litigation over PD ratings.**

California Had High Percentage of Cases Going to Permanent Disability



How PD is rated and paid

- Doctor evaluates medical impairment after MMI.
- Schedule translates “impairment” to “disability.”
 - OLD: “standard disability”
 - NEW: (AMA impairment x adjustment factor)
 - Adjust ? or ? per table of occupation adjustments
 - Adjust ? or ? per table of age adjustments
 - = Adjusted Rating of % Permanent Disability
- Labor Code converts % PD to a number of weeks
- Labor Code sets weekly rate.

Example: \$230 per week if earnings were \$345 or more, injured in 2006, and PD <70%

Estimates of savings from “zeros”

- PD cases eliminated by AMA

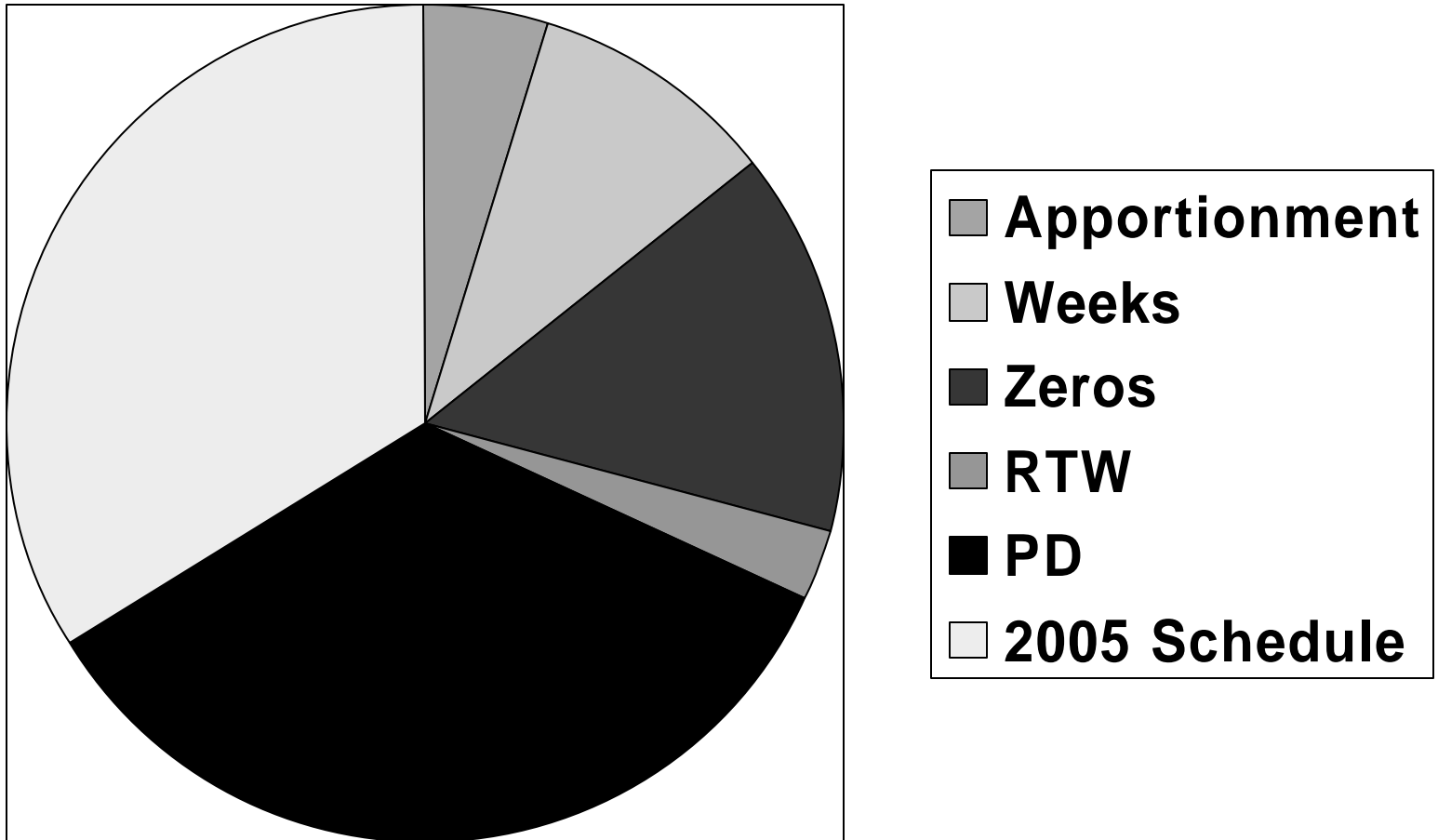
- Brigham study (summary ratings): 30%
- Leigh study (AME reports): 10%
- WCIRB estimate (opinion): 7%
- Reasons to believe high or low estimates:
 - + California had unusually permissive rating system, so expect stricter criteria to eliminate many.
 - Texas has as many cases going to PD, and it is at least as strict as California is becoming.

Suggested working estimate, within the range
and subject to further refinement: 15%

SB 899 trimmed PD costs

- **AMA Guides eliminate work preclusion ratings and many subjective disabilities. Range 7% to 30% savings for zeros. Working estimate: ~15% savings.**
- **Reduced weeks of benefits for first 15 points of PD (affects all PD cases), increased weeks for each point over 70 (affects few cases). Net ~10% savings.**
- **Return to work incentive +/- 15% of weekly benefit. Net ~3% savings.**
- **Apportionment of disability to nonindustrial causation. Currently observing 5% savings.**
- **Combined reduction of about 30% in PD costs, without any changes in the average ratings produced by the rating schedule. Revision of rating schedule delegated to Administrative Director.**

Administrative Change to PD



Administrative Implementation

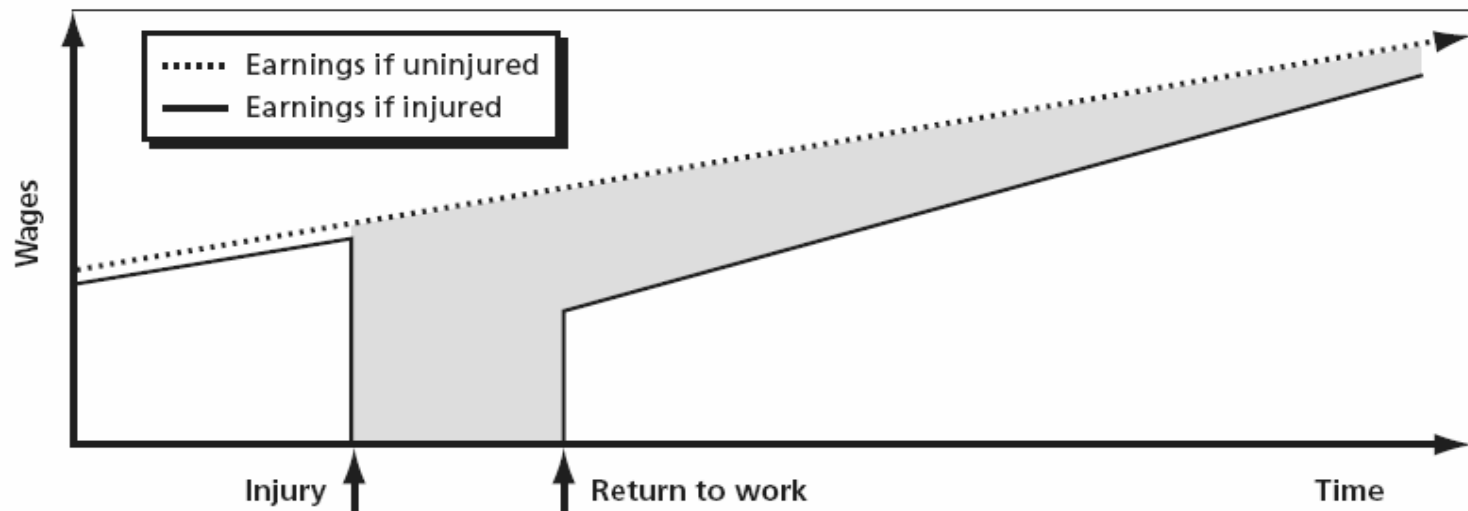
PD Rating Schedule had to be revised to use AMA Guides for injury descriptions and whole person impairments.

Diminished Future Earning Capacity is to be considered by AD to reflect loss of earnings capacity, based on RAND.

RAND data was not linked to AMA ratings.

Loss of Earning Capacity: The average difference between expected earnings and actual earnings after maximum medical improvement

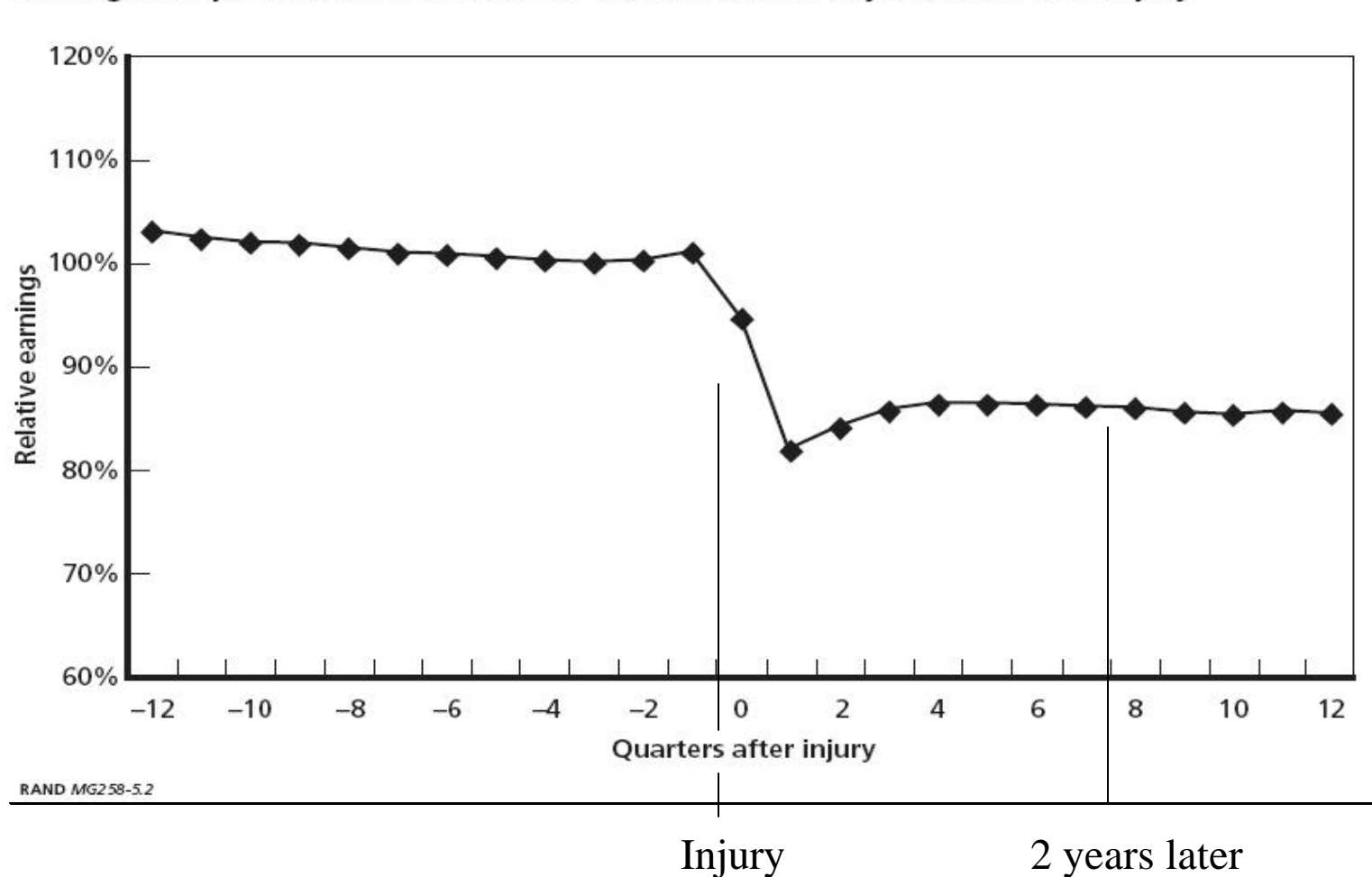
Figure 5.1
Hypothetical Effect on Earnings After a Workplace Injury



RAND MG258-5.1

RAND Measured the Actual Differences in Earnings Between Injured Workers and Uninjured Controls

Figure 5.2
Earnings of Injured Workers Relative to Control Workers, by Quarters After Injury

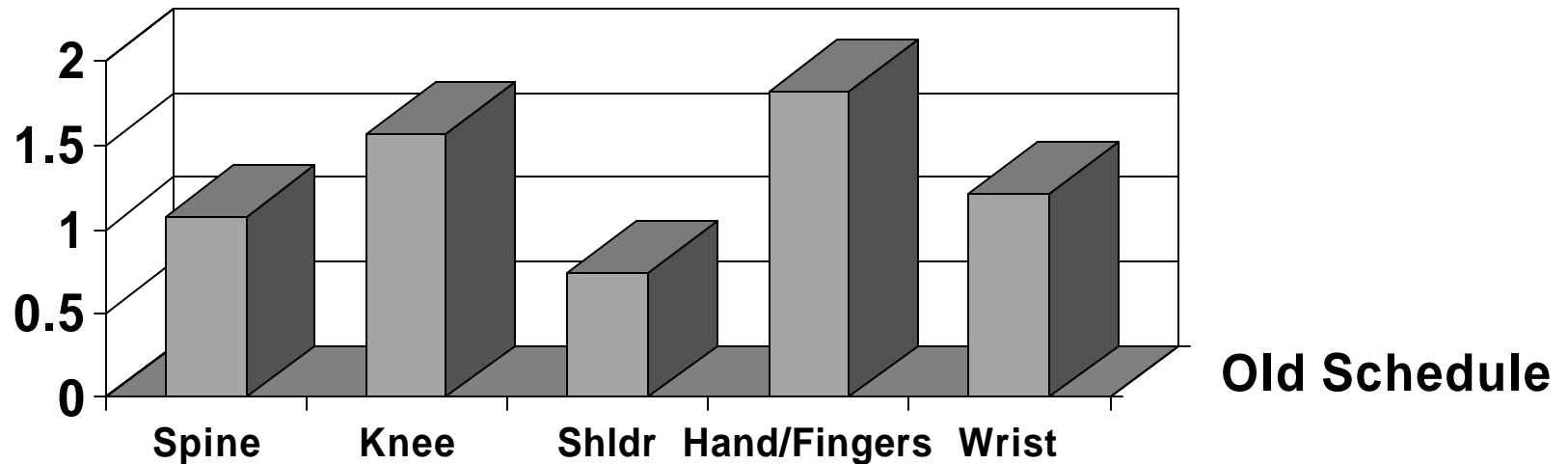


RAND measured earnings losses for different types of injury, and compared them to ratings.

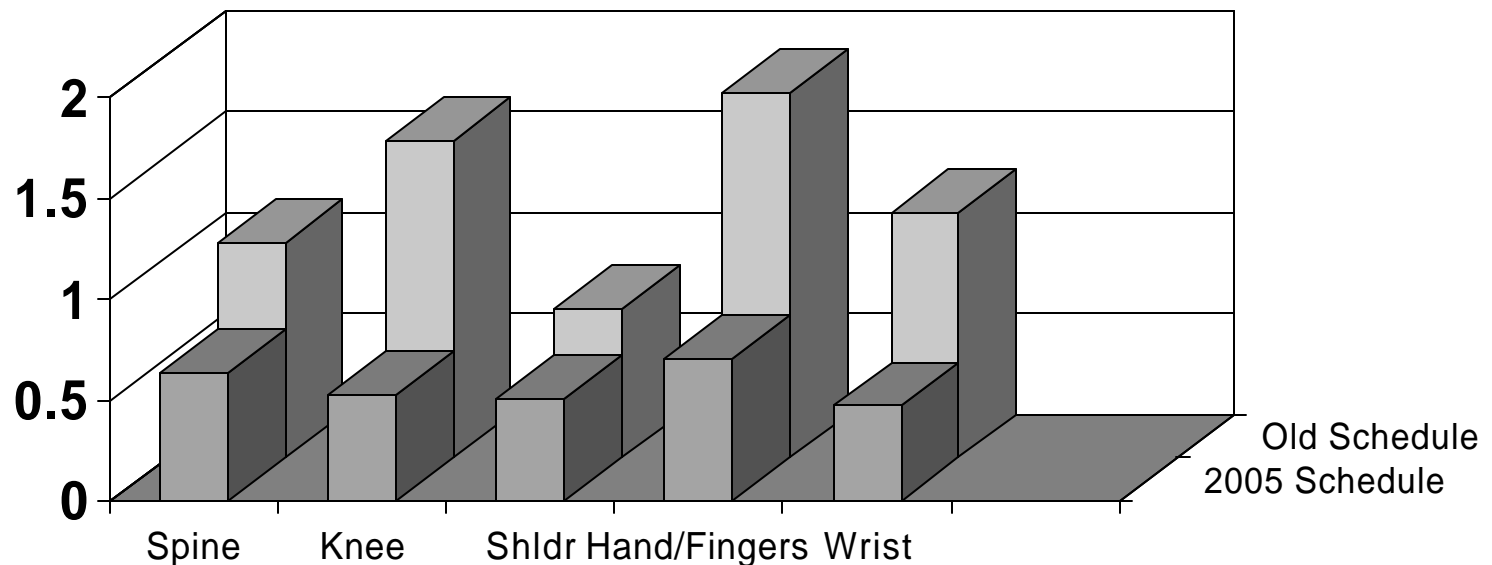
Disability Ratings and Earnings Losses for Broad Injury Categories in the RAND Data

	Standard Rating	3-Year Proportional Earnings Loss	Ratio of Ratings over Losses	Number of Observations
Spine*	19.70	18.45	1.07	39,198
Lumbar	20.93	19.14	1.09	
Cervical	16.05	15.04	1.07	
Thoracic	16.80	15.69	1.07	
Knee	14.65	9.31	1.57	12,846
Loss of grasping power	11.21	8.73	1.28	11,776
General upper extremity	17.89	17.98	1.00	8,776
Shoulder	9.73	13.08	0.74	7,358
Hand / Fingers	8.86	4.89	1.81	6,895
Wrist	13.15	10.84	1.21	5,968
Ankle	14.12	9.28	1.52	4,151
Elbow	9.44	6.23	1.51	2,896
Hearing	10.71	17.69	0.61	2,068
General lower extremity	19.00	17.21	1.10	1,765
Psychiatric	22.13	49.01	0.45	1,433
Toe(s)	10.10	9.09	1.11	523
Hip	21.68	21.10	1.03	475
General abdominal	18.26	19.24	0.95	448
Heart disease	29.78	30.82	0.97	353
Vision	10.31	5.68	1.81	306
Lung disease	20.06	25.44	0.79	264
Headaches	7.75	12.35	0.63	181
Post-traumatic head syndrome	23.85	25.57	0.93	96
Other single	13.81	9.04	1.53	597
Total	15.58	14.25	1.09	108,373

RAND found the old schedule gave very different ratings compared to wage losses, depending on type of injury.



Even with FEC adjustments to AMA impairments, the 2005 schedule ratings are different by type of injury, and lower than old schedule.



Impact of Administrative Revision of Permanent Disability Rating Schedule

Results of first 3500 cases rated under the 2005 schedule, compared to old schedule:

- **Ratings are about 40% lower.**
- **Overall dollars decreased by 50%.**

Combined statutory + administrative reductions ~ 2/3 cut in overall PD dollars.

New FEC adjustments can produce ratings with a consistent relationship to diminished future earning capacity, regardless of type of injury.

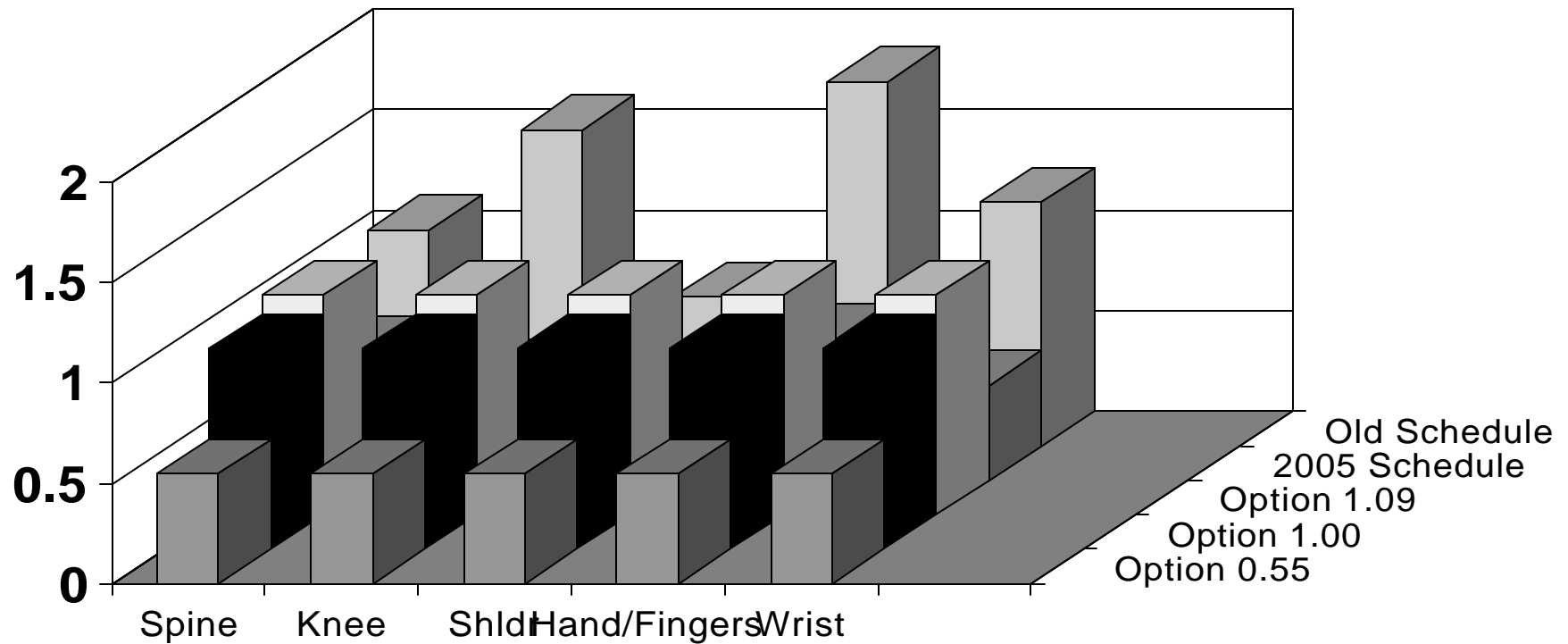
For each type of injury:

$$\frac{\text{Average \% earnings loss}}{\text{Average \% impairment}} \times \text{Overall policy} = \text{new FEC}$$

Average % earnings loss is from RAND study.

Average % impairment is from DEU single-impairment summary ratings, corrected for increasing severity of cases that take longer to reach rating.

Ratings can reflect earnings losses uniformly for different types of injury, while meeting any chosen public policy goal.



Policy Goal for Overall Level of Ratings is Separate Issue from Uniformity Among Types of Injury.

- Uniform ratio between average % ratings and average % earnings loss for each type of injury can be accomplished with data.
- Policy goal for overall level should be stated.
Some options shown:
 - Ratio 1.09: Keep pre-2005 average for rated cases.
 - Ratio 1-to-1: Average % rating = average % earnings loss.
 - Ratio 0.55: Keep 2005 average for rated cases.

Weighing Policy Goals

Just some of the considerations:

Are current ratings adequate for truly injured workers?

Who bears the cost of industrial disability?

Can employers afford it?

Conclusive Presumption

- Schedule has always been only “prima facie evidence” but was applied consistently in the past.
- Dissatisfaction with 2005 schedule could lead to more litigation and exceptions.
- If/when policymakers are satisfied with new schedule, making it “conclusive” will promote efficiency.

CHSWC Recommendations

- Revision to the Permanent Disability Rating Schedule using available data.
- Adjust ratings differently for different types of injuries so ratings are proportionate to long term earnings loss for all types of injuries.
- Adjust ratings uniformly for all types of injuries to produce the proportion between ratings and earnings losses that meets California's goals.
- Regular review of data and updating schedule.
- Conclusive evidence, with few exceptions.
- Separate method for adjusting psychiatric ratings.

CHSWC Website

www.dir.ca.gov/chswc

Draft report contains

- **Explanation of recommendations**
- **Analyses of ratings under 2005 schedule**
- **Bibliography with links to RAND reports and other studies**